

ESTTA Tracking number: **ESTTA209042**

Filing date: **05/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lettuce Entertain You Enterprises, Inc.		
Entity	Corporation	Citizenship	Illinois
Address	5419 N Sheridan Rd Chicago, IL 60640 UNITED STATES		

Attorney information	Antony J McShane Neal, Gerber & Eisenberg LLP 2 North LaSalle Street, Suite 2200 Chicago, IL 60602 UNITED STATES amcshane@ngelaw.com, hmann@ngelaw.com, apeterson@ngelaw.com, docketmail@ngelaw.com Phone:312.269.8000
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Applicant Information

Application No	78622540	Publication date	04/29/2008
Opposition Filing Date	05/05/2008	Opposition Period Ends	05/29/2008
Applicant	mnmco llc 371 Greendale Way Emerald Hills, CA 94062 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Retail grocery stores
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1090459	Application Date	09/04/1975
Registration Date	05/02/1978	Foreign Priority Date	NONE
Word Mark	LETTUCE ENTERTAIN YOU ENTERPRISES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 1974/08/00 First Use In Commerce: 1974/08/00 MANAGING RESTAURANTS FOR OTHERS Class 042. First use: First Use: 1974/08/00 First Use In Commerce: 1974/08/00 RESTAURANT SERVICES		
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U.S. Registration No.	1603142	Application Date	09/27/1989
Registration Date	06/19/1990	Foreign Priority Date	NONE
Word Mark	LETTUCE ENTERTAIN YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1979/00/00 First Use In Commerce: 1979/00/00 RESTAURANT SERVICES		

U.S. Registration No.	1672175	Application Date	09/29/1989
Registration Date	01/14/1992	Foreign Priority Date	NONE
Word Mark	LETTUCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1986/02/27 First Use In Commerce: 1986/02/27 RESTAURANT SERVICES		

U.S. Registration No.	1555073	Application Date	12/30/1988
Registration Date	09/05/1989	Foreign Priority Date	NONE
Word Mark	LETTUCE ENTERTAIN YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1987/06/15 First Use In Commerce: 1987/06/15 CREDIT CARD SERVICES		

U.S. Registration No.	1758977	Application Date	06/29/1992
Registration Date	03/16/1993	Foreign Priority Date	NONE
Word Mark	LETTUCE PARTIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1992/06/05 First Use In Commerce: 1992/06/05 restaurant services		

Attachments	Notice of Opposition for LETTUS.pdf (6 pages)(18263 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Hillary A. Mann/
Name	Hillary A. Mann
Date	05/05/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application)	
Serial No.: 78/622540)	
)	
Published in the Official Gazette)	
On April 29, 2008)	
)	
LETTUCE ENTERTAIN YOU ENTERPRISES,)	
INC.,)	
)	
Opposer,)	NOTICE OF OPPOSITION
v.)	
)	
MNMCO, LLC,)	
)	
Applicant.)	

This Notice of Opposition is submitted in the matter of Application Serial No. 78/622540 for registration by MNMCO, LLC, of the mark LETTÜS based upon its intent to use that mark in connection with “retail grocery stores” in International Class 35, which was published for opposition in the Official Gazette on April 29, 2008. Lettuce Entertain You Enterprises, Inc., an Illinois corporation having a place of business at 5419 N. Sheridan Road, Chicago, Illinois 60640, believes that it would be damaged by the registration of this mark and therefore opposes the same.

The grounds for Opposition herein are as follows:

1. Opposer is a preeminent restaurant and catering company based in Chicago, Illinois, and since its creation in 1971, Opposer has been considered one of the most innovative restaurant companies in the United States. Opposer currently owns, licenses or operates more than 50 restaurants in Illinois, Arizona, Minnesota, Nevada, Georgia, Virginia and Maryland and continues to expand in key locations across the United States, further developing its national reputation. Opposer’s restaurants include Scoozi!, Wildfire, Shaw’s Crab House, Ben Pao, L.

Woods, Big Bowl, Tru, Brasserie Jo, The Magic Pan Crepe Stand, Cafe Ba-Ba-Reeba!, Mity Nice Grill, Twin City Grill, Chicago Flat Sammies, Mon Ami Gabi, foodlife, Vong's Thai Kitchen, Di Pescara, Nacional 27, Don & Charlie's, Osteria Via Stato, Wow Bao, Eiffel Tower, Petterino's, Everest and R.J. Grunts.

2. Opposer offers a broad range of high-quality food items for dine-in, take-out, delivery or catering as part of its restaurant services.

3. Long prior to Applicant's adoption or use of its LETTÜS mark, Opposer commenced use of its LETTUCE ENTERTAIN YOU ENTERPRISES Mark in connection with its nationally renowned restaurant services. Since then, Opposer has expanded its use of marks comprised of the term "lettuce" to include the following registered marks, each of which is now incontestable pursuant to 15 U.S.C. §1065:

Mark	Registration No.	Use in Commerce Date	Registration Date	Goods and Services
LETTUCE ENTERTAIN YOU ENTERPRISES	1,090,459	8/1974	5/2/1978	restaurant services and managing restaurants for others
LETTUCE ENTERTAIN YOU	1,603,142	1979	6/19/1990	restaurant services
LETTUCE	1,672,175	2/27/1986	1/14/1992	restaurant services
LETTUCE ENTERTAIN YOU	1,555,073	6/15/1987	9/5/1989	credit card services
LETTUCE PARTIES	1,758,977	6/5/1992	3/16/1993	restaurant services

These marks constitute Opposer's "LETTUCE Family of Marks" (hereinafter referred to as such).

4. Opposer has further developed its LETTUCE Family of Marks through its use of the marks LETTUCE DELIVER for catering services (Registration No. 1,651,829; registration not renewed), and LETTUCE QUICHE YOU and Design for restaurant services (Registration No. 1,402,595).

5. As part of the continued expansion of its LETTUCE Family of Marks, Opposer uses the mark LETTUCE PLANET in connection with event planning services, as well as the mark LETTUCE CONSULTING GROUP in connection with restaurant management consulting services. LEYE has filed registration applications for these marks, Serial Nos. 78/892,359 and 77/241,677, respectively.

6. Over the past 35 years, Opposer has invested substantial time, effort and resources in promoting and marketing its restaurant and related services under and in connection with its LETTUCE Family of Marks. For example, Opposer has promoted and marketed its restaurant services in connection with its LETTUCE Family of Marks in print media, billboards, frequent-diner programs and in other ways customary in the industry. In addition, Opposer's restaurants have been featured in reviews in regional and national publications. Opposer offers and promotes its LETTUCE-branded gift cards on-line and at its restaurants nationwide. Opposer also maintains a website for its restaurants at <www.lettuceentertainyou.com> and <www.leye.com> and a website for its consulting services at <www.lettuceconsulting.com>. Opposer's restaurants are also promoted nationally at <www.opentable.com>, the leading online reservation service in the United States. Further, Opposer's products are offered directly to consumers through online retailers such as Lou Malnati's Tastes of Chicago, at <www.tastesofchicago.com>, and Peapod, at <www.peapod.com>.

7. As a result of Opposer's continuous and extensive use of its LETTUCE Family of Marks in connection with Opposer's restaurant and related services, its LETTUCE Family of Marks has developed considerable customer recognition. Indeed, marks using the term LETTUCE have come to be recognized by customers as identifying and distinguishing Opposer's restaurant and related services, and Opposer's services alone. The LETTUCE Family of Marks thus has acquired a further distinctiveness and secondary meaning signifying Opposer, and Opposer has cultivated and now owns considerable and valuable goodwill in and symbolized by the LETTUCE Family of Marks.

8. This consumer goodwill and recognition constitutes one of Opposer's most valuable assets. Accordingly, the integrity of Opposer's LETTUCE Family of Marks is extremely important to Opposer, and crucial to the continued vitality and growth of Opposer's business.

9. On May 4, 2005, long after Opposer began use of its LETTUCE Family of Marks, Applicant filed an application to register the mark LETTÜS based upon its intent to use the mark in connection with "grocery stores and grocery services" and "restaurant services." On April 29, 2008, the application was published for the mark as used with "retail grocery services." On information and belief, Applicant has commenced use of the mark with the aforesaid services.

10. Applicant's use and registration of the mark LETTÜS as a trademark is likely to cause confusion or mistake, or to deceive purchasers, in that purchasers are likely to believe Applicant's services are Opposer's services, or are in some way legitimately connected with, sponsored by, or approved by Opposer in violation of 15 U.S.C. § 1052(d).

11. Applicant's registration of the mark LETTÜS would damage Opposer, and on that basis, Opposer opposes the registration of the mark LETTÜS by Applicant in Class 35.

WHEREFORE, Opposer requests that the registration sought by Applicant be refused and that this Notice of Opposition be sustained.

Opposer requests that the requisite filing fee of \$300.00 be charged to the deposit account of Neal, Gerber & Eisenberg, LLP, Account No. 502261.

Respectfully submitted,

Date: May 5, 2008

By: /Antony J. McShane/
One of the Attorneys for
Lettuce Entertain You Enterprises, Inc.
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Hillary A. Mann
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CERTIFICATE OF SERVICE

I, Hillary A. Mann, an attorney, state that, pursuant to 37 CFR §§ 2.101 and 2.119, I caused a copy of the foregoing Notice of Opposition to be served upon:

Doyle B. Johnson
Reed Smith LLP
2 Embarcadero Ctr
Suite 2000
San Francisco, CA 94111-3922

via Federal Express, on May 5, 2008.

/Hillary A. Mann/
Hillary A. Mann